

DEC 08 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY J. PFEIL,

Plaintiff - Appellant,

v.

MICHAEL J. ASTRUE,

Defendant - Appellee.

No. 07-35622

D.C. No. CV-06-05546-FDB

MEMORANDUM *

Appeal from the United States District Court
for the Western District of Washington
Franklin D. Burgess, District Judge, Presiding

Argued and Submitted November 20, 2008
Seattle, Washington

Before: B. FLETCHER and RAWLINSON, Circuit Judges, and EZRA **,
District Judge.

Appellant Cathy J. Pfeil (Pfeil) petitions for review of the district court
decision affirming the Commissioner of Social Security's denial of disability
insurance benefits.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable David A. Ezra, U.S. District Judge for the District of
Hawaii, sitting by designation.

The ALJ's failure to properly analyze the factors relevant to determining whether Pfeil engaged in substantial gainful activity was harmless, as his determination that Pfeil had no severe impairment prior to her date last insured was supported by substantial evidence in the record. *See Parra v. Astrue*, 481 F.3d 742, 747 (9th Cir. 2007); *see also Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164-65 (9th Cir. 2008).

Because no credibility determination was necessary, any failure to credit Pfeil's testimony was of no consequence to the ALJ's decision. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1042-43 (9th Cir. 2008).

Finally, the ALJ's brief comments expressing skepticism about Pfeil's psychic abilities did not rise to the level of bias. *See Rollins v. Massanari*, 261 F.3d 853, 857-58 (9th Cir. 2001).

PETITION DENIED.